vileged: see *Gatley on Libel & Slander* (8th Ed) paras 381, 385 and 400, and *Law* v *Llewellyn*.[1] Where an occasion is privileged at common law for the purposes of civil libel, it will also be privileged for the purposes of criminal libel: see *R* v *Rule* [2] and *R* v *Munslow* [3] at p 761.

It also seems clear that a party who obtains documents by process of court can only use them for the purposes of those proceedings and nothing else: see *Gatley* at para 1210 and *Harman* v *Home Office*,[4] a decision of the House of Lords. A subsequent action founded on documents so disclosed may be struck out: see *Riddick* v *Thames Board Mills*.[5] In *Riddick*,[5] Lord Denning said at p 896:

> The memorandum was obtained by compulsion. Compulsion is an invasion of a private right to keep one's documents to oneself. The public interest in privacy and confidence demands that this compulsion should not be pressed further than the course of justice requires. The courts should, therefore, not allow the other party – or anyone else – to use the documents for any ulterior or alien purpose ... In order to encourage openness and fairness, the public interest requires that documents disclosed on discovery are not to be made use of except for the purposes of the action in which they are disclosed. They are not to be made a ground ... for bringing a libel action ...

In the premises, and as no good cause has been shown to refuse production, I would order the production by the defendants of the complete report within seven days hereof at the office of their solicitors, Messrs Chung & Co, for inspection by the plaintiffs, and the defendants shall, as requested by the plaintiffs, furnish copies thereof on payment of the proper charges. I should, however, like to make it an express condition of this order that the report shall be used by the plaintiffs solely for the purposes of this action and nothing else. I would hasten to add and this must have been obvious, that no observation that I have made herein should be taken to mean that I have in any way passed judgment on any aspect relating to the substantive merits of the case.

The appeal is accordingly allowed with costs fixed at $1,000.

Appeal allowed.

Solicitors: *Godwin & Co*; *Chung & Co.*

Reported by *Ng Sheau Jiuan*

Ong Jin Choon v Lim Hin Hock & Anor

HIGH COURT (SINGAPORE) – SUIT NO 750 OF 1982
THEAN J
7 JUNE 1988

Road Traffic – Collision between motorcycle and taxi – Plaintiff hit as a result of collision – Dispute on liability – Computation of actual loss of earnings

Tort – Negligence – Road accident – Dispute on liability – Computation of actual loss of earnings

The plaintiff, a director of his two family companies, was injured severely when a collision between the first defendant's motorcycle and the second defendant's taxi caused the motorcycle to collide into the plaintiff. The plaintiff brought an action against both the defendants for damages for negligence. Before the trial, the parties agreed on a sum of special and general damages, leaving for trial only two issues, namely, liability and actual loss of earnings sustained by the plaintiff.

Held: (1) There was no dispute that either of the defendants or both of them were liable to the plaintiff who was an innocent bystander. On the evidence, both the defendants were negligent but the second defendant was negligent to a greater degree than the first defendant. The court therefore apportioned the blame as follows: two-thirds to the second defendant and one-third to the first defendant.

(2) The plaintiff did not receive his salaries from the two companies during the period of disability as a matter of legal right, as there was no contractual obligation on the part of the companies to make such payments to him. No credit ought to be given for these amounts drawn by the plaintiffs in assessing his loss of earnings.

(3) A total amount of $40,677.42 is to be awarded as actual loss of earnings sustained by the plaintiffs.

Cases referred to

1 *Browning* v *The War Office & Anor* [1963] 1 QB 750 (refd)
2 *Parry* v *Cleaver* [1970] AC 1 (refd)
3 *Cunningham* v *Harrison & Anor* [1973] 1 QB 942 (refd)
4 *Dennis* v *London Passenger Transport Board* [1948] 1 All ER 779 (refd)
5 *Lim Kiat Boon & Ors* v *Lim Seu Kong & Anor* [1980] 2 MLJ 39 (refd)

Bala Chandran for the plaintiff.
Benedict Chan for the first defendant.
Michael Kuah for the second defendant.

Cur Adv Vult

Thean J: On 5 March 1979 at about 4.00 pm, the plaintiff was waiting for a taxi at the taxi stand in front of the then Singapore Turf Club at Cecil Street. The taxi stand was on the right side of Cecil Street, if one faces the direction of Cross Street and the Multi-Storey Car Park at Cecil Street/Market Street. Cecil Street was at the material time, and is, a one-way street with traffic travelling from Anson Road towards Cross Street and the Multi-Storey Car Park. At the taxi stand, there was a metal railing, and the plaintiff at the time was standing at the

front exit looking towards his left from which direction the vehicles were coming. While standing there and waiting for a taxi he saw two vehicles, a taxi and a motorcycle, coming towards him. The taxi was travelling on the second lane (from his side) and the motorcycle was travelling on the right side of the taxi and on the first lane. According to him, the motorcycle was travelling abreast with the taxi. When the taxi was about 20 metres from the plaintiff it swerved to the right towards the taxi stand and collided with the motorcycle and the impact in turn caused the motorcycle to collide with the plaintiff, in consequence of which the plaintiff sustained severe injuries on his left leg. The motorcycle was ridden by the first defendant and the taxi was driven by the second defendant.

The plaintiff brought this action against both the defendants for damages for negligence. His claim was that the collision was caused either solely by the negligence of the first defendant or the second defendant or by the negligence of both of them. Before me the parties agreed on the following: (a) a sum of $9,471.03 as special damages which consisted mainly of medical expenses, and (b) a sum of $17,500.00 as general damages, leaving for trial only two issues, namely, liability and, if any, actual loss of earnings sustained by the plaintiff. At the conclusion of the trial, I held that on the first issue both the defendants were liable to the plaintiff and that the first defendant was one-third to blame and the second defendant two-thirds to blame for the accident, and on the second issue the plaintiff had sustained actual loss of earnings and awarded him a sum of $48,629.19 for the period from the date of accident to 15 July 1980. I therefore gave judgment for the plaintiff in the total sum of $75,600.22 with interest thereon at 6% pa from 1 April 1984 to the date thereof and with costs to the plaintiff, and made the usual consequential orders.

On the issue of liability the dispute was mainly between the first defendant and the second defendant; there was no dispute that either of the defendants or both of them were liable to the plaintiff, the innocent bystander, who sustained injuries arising from the collision between the first defendant's motorcycle and the second defendant's taxi. Each of the defendants disputed that the accident was caused or contributed by him. Both the defendants gave evidence.

The first defendant said that at the material time just before the accident he was travelling along Cecil Street from Anson Road. He was on the second lane from the right close to lane one and he saw the taxi driven by the second defendant. The taxi was also on the second lane and the first defendant was slightly behind the taxi. Before reaching the taxi stand where the plaintiff was standing, both the taxi and the motorcycle stopped at the junction of Cecil Street and McCallum Street as the traffic light was red. When the light turned green both the vehicles moved forward. There was a vehicle, a motor van, parked on the first lane before the taxi stand. After passing the motor van, the first defendant swerved slightly to the right and was entering the first lane. At that moment, the taxi suddenly swerved to the right heading towards the taxi stand. The first defendant swerved and applied the brakes but he could not avoid the collision, as a result of which he 'was flunged off' his motorcycle which then collided with the plaintiff who was at the taxi stand. He said that the motor van was parked at a distance of about seven to eight car lengths from the taxi stand and that in swerving right the taxi did not give any indication at all; the taxi was slightly ahead of him and he could see the rear lights of the taxi. He was then travelling at a speed between 35 km and 40 km per hour.

The second defendant in his evidence said that on that day at about 4.00 pm he picked up three passengers at the World Trade Centre and was instructed to go to the Singapore Turf Club office at Cecil Street. He proceeded along Telok Blangah to Anson Road and then to Cecil Street. At the junction of Cecil Street and McCallum Street he stopped as the traffic light was red. He did not notice the motorcycle ridden by the first defendant. He was then on the second lane. When the traffic light turned green he moved forward intending to go to the taxi stand. He saw a motor van parked on the right about ten metres from the taxi stand. He had turned on the indicator showing that he was moving right towards the taxi stand. After he had passed the motor van and as he was swerving to the first lane towards the taxi stand, a motorcycle came from the rear and attempted to overtake him on the right. He applied the brakes but could not avoid the collision. He did not see the motorcycle before he swerved to the right lane.

It seems to me that the second defendant in swerving his taxi to the right towards the taxi stand did not keep a proper lookout for vehicles travelling on his right side along the first lane; if only he had kept a proper lookout he would have noticed the motorcycle on the right. In my view, plainly, the second defendant was negligent. The first defendant on the other hand also contributed to the accident. He was riding his motorcycle just slightly behind or at the rear of the taxi. According to him, when the taxi swerved to the right, he also swerved to the right and applied his brakes. I did not accept his evidence that he applied his brakes and slowed down. I also did not accept his evidence that at that time he was travelling at a speed of about 35 km per hour. He must be travelling much faster, and it appeared to me, and this is a matter of inference, that he probably refused to give way to the taxi switching to his lane, and on seeing the taxi swerving right to his lane he must have swerved to the right also and then sought to overtake the taxi on the right and in so doing the collision took place, as a result

of which his motorcycle was thrown forward and collided with the plaintiff. The first defendant was therefore partly to blame for the accident but to a lesser extent than the second defendant. I apportioned the blame as follows: two-thirds to the second defendant and one-third to the first defendant.

I now turn to the second issue, and the first question is whether there was any loss of earnings in this case. The plaintiff was at the material time a director of his two family companies, namely, Pan-Asia Services (Pte) Ltd ('PSL') and Seagull Marine Services (Pte) Ltd ('SML'). He was also the chairman of the board of directors of both the companies. In PSL, he was a majority shareholder and the rest of the shares were held by his children. In SML, the shares were held equally between him and his son, Ong Ee Keng. There is no doubt he controlled both the companies. He was working in these two companies as a director. Prior to the accident, he was drawing a salary of $2,000 per month as a director of PSL and $500 per month as a director of SML. Over and above the salaries, these companies also paid dividends and directors' fees. As a result of the accident, he was disabled from working for the companies for a rather long period. During the period in which he was incapacitated he continued to draw salaries from these two companies, in the case of PSL up to May 1981 and in the case of SML up to June 1980. It was not in evidence that he drew these salaries as of right in the circumstances, that is, while he was incapacitated and not working for the companies. In other words, the companies were under no obligation to pay him the salaries. However, he drew the salaries as he required them for his livelihood and expenditure. He said he would refund to the companies any amount awarded to him in respect of such loss.

It is clear that the plaintiff did not receive these salaries as of right under his contracts of service with the companies, assuming he had such contracts of service. If he did, he would not be entitled to recover any loss of earnings from the defendants, as no loss had been suffered. In *Browning* v *The War Office and Anor*,[1] the plaintiff was injured in an accident and was paid the disability pension by his employer. It was held that in assessing his loss of earnings credit must be given for the amount he received as of right. This case which dealt with pensions was not approved by the House of Lords in *Parry* v *Cleaver*,[2] but the following dictum of Lord Denning MR, at p 759, on assessment of loss of wages is, in my opinion, good law:

> ... the injured person must, I think, give credit for any sums which he receives as of right in consequence of his injury. Take wages, for instance, that his employer pays him during his incapacity, being under an obligation to do so. The typical case is the policeman who is entitled to his full wages whilst disabled. He gets them from his employer and he cannot claim the self-same wages again from the wrongdoer. He cannot be allowed to get them twice over. He must give credit for the wages he has received and is entitled to receive.

On the other hand, if payments were made to the injured person by his employer on an ex gratia basis, such payments would not be taken into account in assessing his loss of earnings in the claim against the wrongdoer: see *Cunningham* v *Harrison and Anor*.[3]

In *Dennis* v *London Passenger Transport Board*,[4] the plaintiff was injured through the negligence of the defendant and during the period of his disability received no wages, but was paid by his employer amounts which equalled his wages. The plaintiff was expected, but was not under any legal obligation, to refund to his employer the amounts he received if he should recover damages from the defendant. It was held that such payments should not be deducted from the amount recoverable by the plaintiff for loss of wages. Denning J (as he then was) said, at p 779:

> ... The net result appears to be that the plaintiff received his wages from the London County Council and the Ministry of Pensions. They may have no legal claim to recover it from him, but, in those circumstances, is it to form part of the damages which the defendants have to pay?
>
> The plaintiff tells me, through his counsel, that he is ready to undertake, if he recovers damages, to repay those two bodies, the London County Council and the Ministry of Pensions, the sums they have paid him, which he is under a moral obligation to do. The cardinal point to remember is that it is the defendants who are responsible for what has occurred. In my opinion, a wrongdoer is not to be allowed to reduce damages by the fact that other persons have made up to the plaintiff his wages, like the London County Council and the Ministry of Pensions in this case. The plaintiff has lost his wages. In point of law, therefore, prima facie he should have them paid by the wrongdoer. As they have been made up to him by other people who expect to be repaid I think it is proper that that sum should be included as damages, but subject to the direction that the amount paid to the plaintiff by the Ministry of Pensions and the London County Council shall be paid to those bodies out of the sums recovered.

Again, in *Lim Kiat Boon and Ors* v *Lim Seu Kong & Anor*,[5] the plaintiff who was injured in an accident by the negligence of the defendants was a director of the company which paid his salary and commission during his period of disability; but there was no obligation on the part of the company to make such payments. At the date of payment, there was no expectation that he should refund the amounts received but subsequently at the hearing the plaintiff agreed to repay the amounts to the company, should they be awarded as damages. It was held by the High Court of Malaya that the plaintiff was entitled to recover these amounts of salary and commission.

The instant case is rather unique. The plaintiff did not receive his salaries from the two companies during the period of his disability as a matter of legal right; there was no contractual obligation on the part of PSL and SML or either of them to make such payments to him. It could not be said that he was entitled to receive these salaries as of right, as he was not working or performing

any services for the companies or either of them. Nor could it be said that the companies paid him the salaries on an ex gratia basis. But he needed these amounts for his livelihood and expenditure and he therefore drew these amounts from the companies; he said he would refund to the companies whatever amount awarded as loss of earnings. In my view, these amounts could be regarded as advances made to him by the companies in the form of a loan or moneys wrongfully taken by a director without any authority – there was no evidence of any board resolutions passed authorizing such payments. In either case he was under an obligation to refund to the companies the amounts received by him. In my opinion, no credit ought to be given for these amounts drawn by him in assessing his loss of earnings.

The next question is the quantum of the loss of earnings. According to medical evidence, the plaintiff was not well for the period from the date of accident to 15 July 1980. Dr William Fung, the consultant orthopaedic surgeon of Tan Tock Seng Hospital, said that the plaintiff was incapacitated from work until that date. Up to that time, he had a plaster cast and he was immobilized. The plaintiff had sustained a compound comminuted fracture of the mid-shafts of the left tibia and fibula. On 19 May 1980 or thereabout he was advised to undergo an operation as there were signs of non-union of the fracture. Accordingly, he went through an operation on or about that date. He was discharged on 8 June 1980, and thereafter he received treatment as an outpatient. It was suggested that while he was in plaster cast he could move from home to office and other places and work. But Dr Fung said that he was not wholly fit and even if he was seated he would still have pain and that it was not easy for him to get about in a plaster. It seems to me that for the period from the date of accident to 15 July 1980 he could not really work effectively as a director of his companies. I therefore considered this period as a reasonable one for the purpose of calculating the quantum of loss of earnings. During this period the loss he had sustained in terms of salary from PSL amounted to $32,741.94 calculated at $2,000 pm. As for SML, no salary was drawn for the period after June 1980 at the company was not doing well. I allowed a sum of $7,935.48 representing his loss of salary from that company for the period up to June 1980 at $500 per month. To these amounts totalling $40,677.42 were added the respective amounts of contribution to the Central Provident Fund, thus making a total sum of $48,629.19 which I awarded as special damages for loss of earnings.

Order accordingly.

Solicitors: *Mallal & Namazie*; *Goh Poh & Partners*; *Lee & Lee.*

Reported by *Ng Sheau Jiuan*

Re Pek Chuan Development Pte Ltd

HIGH COURT (SINGAPORE) – COMPANIES WINDING UP NO 379 OF 1985
CHAN SEK KEONG JC
7 MAY 1988

Companies and Corporations – Winding up of company – Setting aside petition for winding up for want of prosecution – Delay of company in filing affidavit in opposition – Whether petitioner under duty to obtain hearing date – Whether company adversely affected by petition – Companies Act (Cap 50, 1985 Ed), ss 254(1)(i), 257(2), 285 – Companies (Winding-Up) Rules 1969, r 30(1)

In this case, a company, Pek Chuan Development Pte Ltd ('the company'), applied to set aside a winding-up petition for want of prosecution. The company was incorporated on 17 April 1978 with an authorized capital of $5,000,000 divided into 5,000,000 shares of $1 each. The main object of the company is property development. Clause 4 of the memorandum of association specifically provided that certain things could not be done with regard to the corporate existence or character of the company, its shares or a piece of land at Lavender Street/Kallang Bahru ('the URA land') without the prior consent of the Urban Redevelopment Authority ('URA'). The issued capital of the company was $1,500,000 divided into 1,500,000 shares of which, at the date of the petition, about 30% was owned by Tai Hua Food Industries, 15% by Kuah Hong Kheng ('the petitioner') and about 55% by Pek Seng Company Pte Ltd. The majority shareholders were controlled by one Pek Tiong Seng ('PTS') who consequently became the managing director of the company.

The company was successful in bidding for a piece of land offered by the URA and a contract for sale was signed on 10 July 1978. The company completed the development of a building on the URA land known as Pek Chuan Building consisting of eight shop units and 17 office units. At the date of the petition, ie 24 July 1985, seven units remained unsold. In or about early 1982, the minority shareholders began to be dissatisfied with the way in which PTS conducted the affairs of the company. On 3 April 1984, one Phua Beng Tee, the managing director of Tai Hua Food Industries, filed a winding-up petition in CWU no 104 of 1984 on the ground that it was just and equitable to wind up the company. This petition was subsequently dismissed by consent of the parties.

However, on 24 July 1985, the petitioner filed another petition, the subject matter of this motion, to wind up the company, again on the ground that it was just and equitable to do so under s 254(1)(i) of the Companies Act. When the petition came on for hearing on 11 October 1985 on a normal motion day, it was adjourned to a special date for hearing to be fixed by mutual consent of the parties. On that day, the company had not filed any affidavit in opposition to the petition. After the adjournment, many events took place between 28 November 1985 and 11 March 1988. The company's motion to set aside the petition for winding up the company was heard on 28 and 29 March 1988. Both the company and the petitioners blamed each other for the delay.

Held, dismissing the application: (1) As a general rule, winding-up proceedings should be heard expeditiously even where a company is solvent on the business of a company.

(2) On the evidence, both parties had wittingly or unwittingly contributed to the delay in the hearing of the petition and any injury caused to the company was caused by both of them, although not necessarily in the same proportion.